

# Chapter 1200 Appeal

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## 1201 Introduction

The Patent and Trademark Office in administering the Patent Laws makes many decisions of a discretionary nature which the applicant may feel deny him or her the patent protection to which he or she is entitled. The differences of opinion on such matters can be justly resolved only by prescribing and following judicial procedures. Where the differences of opinion concern the denial of patent claims because of prior art or material deficiencies in the disclosure set forth in the application, the questions thereby raised are said to relate to merits, and appeal procedure within the Patent and Trademark Office and to the courts has long been provided by statute.

The line of demarcation between appealable matters for the Board of Appeals and petitionable matters for the Commissioner of Patents and Trademarks should be carefully observed. The Board will not ordinarily hear a question which it believes should be decided by the Commissioner, and the Commissioner will not ordinarily entertain a petition where the question presented is an appealable matter. However, since 37 CFR 1.181(f) states that any petition not filed within two months from the action complained of may be dismissed as untimely and since 37 CFR 1.144 states that petitions from restriction requirements must be filed no later than appeal, petitionable matters will rarely be present in a case by the time it is before the Board for a decision. Note *In re Hengehold*, 169 USPQ 473 (CCPA 1971).

## 1202 Channels of Ex Parte Review



